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## Statute Cited

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*The Cultivation of Resentment: Treaty Rights and the New Right*. By Jeffrey R. Dudas. Palo Alto, CA: Stanford University Press, 2008. Pp. 224. \$50.00 cloth.

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Too many years after the tide turned on civil rights in the United States, conservative countermobilization is gaining deserved attention in sociolegal studies. Dudas's new book adds theoretical and historical heft to this project by analyzing in detail legal mobilization against Indian treaty rights, refining emergent theoretical apparatuses designed to explain the rhetorical and cultural mechanisms distinguishing and diverting rights claims, and self-consciously organizing the growing scholarly interest in countermobilization (Teles 2008; Herman 1997; Goldberg-Hiller & Milner 2003). If the struggles of the New Right to oppose abortion, same-sex marriage, affirmative action, and Indian sovereignty—among other issues—have moved the common sense about rights away from the dominant trope of the civil rights movement that has captivated law and society from its inception, Dudas steers readers toward an alternative set of theories and sociolegal practices revealing an ambivalence that may have always underscored the postwar American cultural obsession with rights (see Greenhouse et al. 1994). This book shows that rights not only mobilize liberal and progressive ideals, but simultaneously help organize reactionary identities, articulate and broadcast these commitments to

receptive audiences, and inflame the outsized passions that make rights for a few a recurrent antagonist of democratic life.

Dudas demonstrates with historically rich case studies that the mobilization by non-Indians against enhanced or respected treaty rights involving fishing in the Northwest and casino gambling in Connecticut has depended upon the rhetoric of “special rights” to voice cultural and economic grievances, excoriate legal and political authorities, and rebuild status hierarchies by linking conservatives to nationalistic American values of merit, community harmony, and equal opportunity.

Special rights rhetoric facilitates this work by embracing a (nonetheless transformed) notion of equality in the very accusation of excess that it opposes; in Dudas’s words, “special rights are said to go beyond legitimate rights claims for equal treatment by government (i.e., equal rights)” (p. 42). Voiced as a commitment to “equal rights, not special rights,” conservatives couch their resentment of Indian recognition and entitlement in dominant idioms that celebrate and obscure the progressive tradition of rights claiming.

The case studies animating this book offer an important examination of the ways that this rhetoric has emerged from the developing rights consciousness of Indian activists. Treaty rights and their promise of a quasi-sovereignty mobilized tribal activists in the decades of the 1950s, 1960s, and 1970s. These movements were often enabled or enhanced with the development of a “pan-Indian” consciousness linking rights-based grievances into a broader and deeper struggle for Indian rights. As Indians appropriated the language of rights in defense of their treaty-based entitlements to take salmon and trout in the Northwest and secured these rights in the courts, anti-treaty rights activists emerged by the late 1960s opposed to the creation of native “super-citizens” and dedicated to stopping or slowing implementation of court-ordered respect for treaty language. Dudas illustrates the rhetorical play of these activists as a creative attempt to exploit something common to rights culture in an effort to diminish support for Indian rights claims:

Opponents’ use of special-rights talk to express their resentment of [Judge George] Boldt’s decision [in *U.S. v. Washington* 1974] was undoubtedly influenced by the strategies of fishing-rights activists . . . . Compelled to defend the interests they felt that Boldt had slighted, opponents sought to resignify the treaty right itself, noting how it guaranteed the fishing rights of non-Indians as well . . . . According to this perspective, it would not make sense for either group to enjoy a prior claim on the resource, because such a differential capacity would subvert the plain moral logic of the treaties—a moral logic that was itself consistent with the traditional American faith in equal rights. (pp. 64–5)

This argument, that Indian activists and their opponents were on a common cultural terrain defending their divergent interests, raises interesting questions about the oppositional political and social identities forged in these struggles. Do these identities extend beyond the tactics embraced in these rights contests? And in which ways might they constitute a broader conservative sentiment in other issue areas suffused with the rhetoric of special rights (e.g., gay rights, affirmative action)? Dudas's interest in explaining "how special-rights talk constructs the identities of those who employ it" (p. 10) is a central concern for this book and a direction that he wishes studies of countermobilization would pursue; he nicely brings to focus the significance of identity for understanding the motivational resentment of Indian rights opponents in the last chapter of the book. Dudas is right, I think, that issues of identity formation should play a larger part in an understanding of conservative rights mobilization, and this book is a significant contribution to that goal. Nonetheless, numerous aspects of the questions above are not sufficiently interrogated, leaving a tantalizing set of issues still to pursue in this endeavor.

Dudas argues that the resentment infusing countermobilization is "historically specific, emerging from a collective worldview that represents the egalitarian changes of the latter half of the twentieth century as confirmation of America's historic commitment to the principles of nondiscrimination and equal rights" (p. 10). Although the common rhetoric of special rights binds New Right activists to their opponents via abjection and dis-identification, readers need to know more about the ways that these identities articulate. Indians pursuing their treaty rights may be more like proponents of affirmative action than, say, advocates of same-sex marriage, in that the economic consequences of their demands are more easily projected as zero sum through special rights rhetoric, especially when fish stocks dwindle or the economy softens. Do the challenges to assumed economic interests posed by court-enforced treaty rights create different kinds of identities (e.g., by emphasizing the loss of equal opportunity) than equal rights to marriage, where threats to dominant status and religious orders predominate? Of what significance is the presumption of complex, overlapping relations of sovereignty associated with Indian rights that are sustained by constitutional exception compared to the analogies to African American civil rights promoted by gay rights activists? Finally, in what ways do key historical identity projections of natives as childlike (p. 20) vary by regimes of American regulation of Indian nations (e.g., extermination, termination/assimilation, and autonomy), and how do these constructions dovetail with the New Right's elevation of innocence into the framework of "fetal citizenship" (Berlant 1997) and the rhetorical use of children as

“affective magnets” designed to “re-orient peoples’ identities, histories, and worlds” (Burlein 2002:8)?

The kinds of comparisons suggested by these questions may provide a stronger sense of what has made special rights central to “the broader success of New Right politics” (p. 2) that Dudas seeks to explain. Nonetheless, this book does not fall too far from its own mark. Dudas has written a useful text for introducing and advancing the rhetoric of countermobilization and its cultural consequences. He ably demonstrates the importance of bringing the contest over Indian rights into the scholarly picture.

### References

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